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Art Unit 1206

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Paper No. 18

Appeal No. 91-0763

**BOARD OF PATENT APPEALS
& INTERFERENCES**

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UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte Richard R. Hertzog,
Stylianios Sifniades
and
William B. Fisher

Application for Patent filed January 17, 1989, Serial
No. 297,333. Decomposition Of Cumene Oxidation Product.

William H. Thrower et al. for appellants.

Primary Examiner - James H. Reamer.

Before W. Smith, Kimlin and Garris, Examiners-in-Chief.

Garris, Examiner-in-Chief.

ON REQUEST FOR RECONSIDERATION

This is in response to the request for reconsideration of our decision mailed March 18, 1992 wherein we affirmed the examiner's decision rejecting all of the appealed claims over prior art under 35 U.S.C. 103.

In this request, the appellants argue that our decision failed to address the claim 1 preamble recitation "with enhanced safety of operation". According to the appellants, "[t]his

enhanced safety of operation that results from the improved process stability is not taught or suggested by the references ... and is asserted to be evidence of nonobviousness, i.e. unexpected results, that overcome any prima facie case of obviousness established by the references" (request, pages 1-2).

We do not consider the unqualified recitation "with enhanced safety of operation" in the preamble of appealed claim 1 to distinguish over the Sifniades patent. Clearly, the process of Sifniades exhibits "enhanced safety of operation" relative to a process that is operated, for example, at higher CHP concentrations than envisioned by patentee. Regarding this latter point, we note that higher CHP concentrations result in decreased operation stability as the appellants have acknowledged (e.g., see lines 4 through 10 on page 3 of the subject specification) and that the highly exothermic nature of a CHP decomposition is well known (e.g., see lines 9 through 11 in column 1 of Sifniades). In any event, since skill in the art is presumed (In re Sovish, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985)), it would have been prima facie obvious for one with ordinary skill in the art to operate the process of Sifniades in such a manner as to enhance stability and thereby the safety of the reaction.

As for the appellants' assertions of unexpected results, we maintain the position that the record before us contains little, if any, probative evidence of unexpected results

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for the reasons enunciated on pages 5 and 6 of our original decision.

In light of the foregoing, the appellants' request is granted to the extent that our decision has been reconsidered but is denied with respect to making any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a). See the final rule notice, 54 F.R. 29548 (July 13, 1989), 1105 O.G. 5 (August 1, 1989).

DENIED

William F. Smith
William F. Smith
Examiner-in-Chief

Edward C. Kimlin
Edward C. Kimlin
Examiner-in-Chief

Bradley R. Garris
Bradley R. Garris
Examiner-in-Chief

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BOARD OF PATENT
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